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HOUSE BILL 556

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; ALLOWING MEMBERS RETIRED FROM A LOCAL ADMINISTRATIVE UNIT TO BEGIN EMPLOYMENT AT THE PUBLIC EDUCATION DEPARTMENT WITHOUT SUSPENDING RETIREMENT BENEFITS; ALLOWING MEMBERS WHO ARE STATE AGENCY EMPLOYEES TO ELECT TO QUALIFY FOR COVERAGE UNDER THE PUBLIC EMPLOYEES RETIREMENT ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 22-11-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 126, as amended) is amended to read:

"22-11-2. DEFINITIONS. -- As used in the Educational Retirement Act:

A. "member" means an employee, except for a participant or a retired member, coming within the provisions of the Educational Retirement Act;

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1                   B. "regular member" means:

2                   (1) a person regularly employed as a teaching,  
3 nursing or administrative employee of a state educational  
4 institution, except for:

5                               (a) a participant; or

6                               (b) all employees of a general hospital  
7 or outpatient clinics thereof operated by a state educational  
8 institution named in Article 12, Section 11 of the constitution  
9 of New Mexico;

10                   (2) a person regularly employed as a teaching,  
11 nursing or administrative employee of a junior college or  
12 community college created pursuant to Chapter 21, Article 13  
13 NMSA 1978, except for a participant;

14                   (3) a person regularly employed as a teaching,  
15 nursing or administrative employee of a technical and  
16 vocational institute created pursuant to the Technical and  
17 Vocational Institute Act, except for a participant;

18                   (4) a person regularly employed as a teaching,  
19 nursing or administrative employee of the New Mexico boys'  
20 school, the New Mexico girls' school, the Los Lunas medical  
21 center or a school district or as a [~~certified school~~  
22 ~~instructor~~] licensed school employee of a state institution or  
23 agency providing an educational program [~~and holding a standard~~  
24 ~~or substandard certificate issued by the state board~~] or a  
25 licensed school employee who is regularly employed by the

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1 public education department or the board, except for a  
2 participant and except for licensed school employees of the  
3 public education department, the board, the department of  
4 health, the corrections department and the children, youth and  
5 families department after July 1, 2004;

6 [~~(5)~~] ~~a person regularly employed by the~~  
7 ~~department of education or the board holding a standard or~~  
8 ~~substandard certificate issued by the state board at the time~~  
9 ~~of commencement of such employment;~~

10 ~~(6)~~] (5) a member classified as a regular  
11 member in accordance with the rules of the board;

12 [~~(7)~~] (6) a [~~person~~] licensed school employee  
13 regularly employed by the New Mexico activities association  
14 [~~holding a standard certificate issued by the state board~~] at  
15 the time of commencement of such employment; or

16 [~~(8)~~] (7) a [~~person~~] licensed school employee  
17 regularly employed by a regional education cooperative [~~holding~~  
18 ~~a standard certificate issued by the state board~~] at the time  
19 of commencement of such employment;

20 C. "provisional member" means a person not eligible  
21 to be a regular member but who is employed by a local  
22 administrative unit designated in Subsection B of this section;  
23 provided, however, that employees of a general hospital or  
24 outpatient clinics thereof operated by a state educational  
25 institution named in Article 12, Section 11 of the constitution

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1 of New Mexico are not provisional members;

2 D. "local administrative unit" means an employing  
3 agency however constituted that is directly responsible for the  
4 payment of compensation for the employment of members or  
5 participants;

6 E. "beneficiary" means a person having an insurable  
7 interest in the life of a member or a participant designated by  
8 written instrument duly executed by the member or participant  
9 and filed with the director to receive a benefit pursuant to  
10 the Educational Retirement Act that may be received by someone  
11 other than the member or participant;

12 F. "employment" means employment by a local  
13 administrative unit that qualifies a person to be a member or  
14 participant;

15 G. "service employment" means employment that  
16 qualifies a person to be a regular member;

17 H. "provisional service employment" means  
18 employment that qualifies a person to be a provisional member;

19 I. "prior employment" means employment performed  
20 prior to the effective date of the Educational Retirement Act  
21 that would be service employment or provisional service  
22 employment if performed thereafter;

23 J. "service credit" means that period of time with  
24 which a member is accredited for the purpose of determining his  
25 eligibility for and computation of retirement or disability

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1 benefits;

2 K. "earned service credit" means that period of  
3 time during which a member was engaged in employment or prior  
4 employment with which he is accredited for the purpose of  
5 determining his eligibility for retirement or disability  
6 benefits;

7 L. "allowed service credit" means that period of  
8 time during which a member has performed certain nonservice  
9 employment with which he may be accredited, as provided in the  
10 Educational Retirement Act, for the purpose of computing  
11 retirement or disability benefits;

12 M. "retirement benefit" means an annuity paid  
13 monthly to members whose employment has been terminated by  
14 reason of their age;

15 N. "disability benefit" means an annuity paid  
16 monthly to members whose employment has been terminated by  
17 reason of a disability;

18 O. "board" means the educational retirement board;

19 P. "fund" means the educational retirement fund;

20 Q. "director" means the educational retirement  
21 director;

22 R. "medical authority" means a medical doctor  
23 within the state or as provided in Subsection D of Section  
24 22-11-36 NMSA 1978 either designated or employed by the board  
25 to examine and report on the physical condition of applicants

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1 for or recipients of disability benefits;

2 S. "actuary" means a person trained and regularly  
3 engaged in the occupation of calculating present and projected  
4 monetary assets and liabilities under annuity or insurance  
5 programs;

6 T. "actuarial equivalent" means a sum paid as a  
7 current or deferred benefit that is equal in value to a regular  
8 benefit, computed upon the basis of interest rates and  
9 mortality tables;

10 U. "contributory employment" means employment for  
11 which contributions have been made by both a member and a local  
12 administrative unit pursuant to the Educational Retirement Act;

13 V. "qualifying state educational institution" means  
14 the university of New Mexico, New Mexico state university, New  
15 Mexico institute of mining and technology, New Mexico highlands  
16 university, eastern New Mexico university, western New Mexico  
17 university, Albuquerque technical-vocational institute, Clovis  
18 community college, Luna vocational-technical institute, Mesa  
19 technical college, New Mexico junior college, northern New  
20 Mexico state school, San Juan college and Santa Fe community  
21 college;

22 W. "participant" means:

23 (1) a person regularly employed as a faculty  
24 or professional employee of the university of New Mexico, New  
25 Mexico state university, New Mexico institute of mining and

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1 technology, New Mexico highlands university, eastern New Mexico  
2 university or western New Mexico university who first becomes  
3 employed with such an educational institution on or after July  
4 1, 1991, or a person regularly employed as a faculty or  
5 professional employee of the Albuquerque technical-vocational  
6 institute, Clovis community college, Luna vocational-technical  
7 institute, Mesa technical college, New Mexico junior college,  
8 northern New Mexico state school, San Juan college or Santa Fe  
9 community college who is first employed by the institution on  
10 or after July 1, 1999 and who elects, pursuant to Section  
11 22-11-47 NMSA 1978, to participate in the alternative  
12 retirement plan; and

13 (2) a person regularly employed who performs  
14 research or other services pursuant to a contract between a  
15 qualifying state educational institution and the United States  
16 government or any of its agencies who elects, pursuant to  
17 Section 22-11-47 NMSA 1978, to participate in the alternative  
18 retirement plan, provided that the research or other services  
19 are performed outside the state;

20 X. "salary" means the compensation or wages paid to  
21 a member or participant by any local administrative unit for  
22 services rendered. "Salary" includes payments made for annual  
23 or sick leave and payments for additional service provided to  
24 related activities, but does not include payments for sick  
25 leave not taken unless the payment for the unused sick leave is

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1 made through continuation of the member on the regular payroll  
2 for the period represented by that payment and does not include  
3 allowances or reimbursements for travel, housing, food,  
4 equipment or similar items;

5 Y. "alternative retirement plan" means the  
6 retirement plan provided for in Sections 22-11-47 through  
7 22-11-52 NMSA 1978; and

8 Z. "retired member" means a person whose employment  
9 has been terminated by reason of age and who is receiving or is  
10 eligible to receive retirement benefits. "

11 Section 2. Section 22-11-17 NMSA 1978 (being Laws 1967,  
12 Chapter 16, Section 141, as amended) is amended to read:

13 "22-11-17. PROVISIONAL MEMBERSHIP. --

14 A. A provisional member shall be covered by the  
15 provisions of the Educational Retirement Act but shall have the  
16 option to exempt himself from its coverage. A provisional  
17 member exempting himself from the provisions of the Educational  
18 Retirement Act shall not be entitled to the benefits or  
19 coverage under any other state retirement program except as  
20 otherwise provided in this section. This section shall not  
21 affect any rights a provisional member may have under the  
22 provisions of the federal Social Security Act. This option to  
23 exempt must be exercised within one year of employment  
24 according to the [regulations] rules adopted by the board.

25 [Any] A provisional member exempting himself pursuant to this

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1 section shall be entitled to a refund of any contributions made  
2 pursuant to the Educational Retirement Act prior to the  
3 exercise of the exemption.

4 B. A provisional member not exempt from the  
5 coverage of the Educational Retirement Act shall have the right  
6 to earned service-credit for periods of employment subsequent  
7 to July 1, 1957 and prior to July 1, 1961, provided that all  
8 contributions at the rates in effect during that period of  
9 employment are paid. If a provisional member chooses to make  
10 the contributions for that period, the local administrative  
11 unit employing a member during that period shall pay the  
12 employer's contribution at the rate in effect during that  
13 period of employment. Contributions prior to July 1, 1961 by  
14 both the provisional member and the local administrative unit  
15 shall bear interest at the rate of three percent a year from  
16 July 1, 1961 until paid.

17 C. A provisional member exempt from the coverage of  
18 the provisions of the Educational Retirement Act shall have the  
19 right to revoke the exemption at any time; however, within the  
20 first two weeks following the beginning of each school year,  
21 such provisional member shall be informed by the local  
22 administrative unit in writing of his right to revoke the  
23 exemption and shall sign a statement to the effect that he does  
24 or does not wish to revoke the exemption. A copy of such  
25 statement shall be kept in the personnel file of the

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1 provisional member.

2 D. A provisional member who revokes the exemption  
3 from coverage may, at any time before June 30, 2006, acquire  
4 earned service credit for periods of employment during which  
5 the exemption or exemptions were in force if both the member  
6 contributions and the local administrative unit contributions,  
7 at the rates in effect during the periods of employment and  
8 applied to the earnings of the member during those periods, are  
9 paid to the fund, together with interest at the actuarial rate  
10 set by the board. The contributions shall be paid in the  
11 following manner:

12 (1) both the member contributions and the  
13 local administrative unit contributions, together with  
14 interest, shall be paid by the member; or

15 (2) if the member tenders payment of the  
16 member contributions, with interest, the local administrative  
17 unit by whom the member was employed may, but shall not be  
18 obligated to, pay the local administrative unit contributions,  
19 with interest.

20 E. A provisional member employed by the board, the  
21 department [~~of education~~], the New Mexico school for the deaf,  
22 the northern New Mexico state school, the New Mexico school for  
23 the visually handicapped, the New Mexico girls' school, the New  
24 Mexico boys' school or the Los Lunas medical center shall have  
25 the option of qualifying for coverage under either the

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1 Educational Retirement Act or the Public Employees Retirement  
2 [~~association of New Mexico~~] Act. This option shall be  
3 exercised by filing a written election with both the  
4 educational retirement director and the executive secretary of  
5 the public employees retirement association [~~of New Mexico~~].  
6 This election shall be made within six months after employment  
7 and shall be irrevocable regardless of subsequent employment or  
8 reemployment in any administrative unit enumerated in this  
9 subsection. Until this election is made, the provisional  
10 member shall be covered and shall be required to make  
11 contributions under the Educational Retirement Act.

12 F. A member who is employed by the public education  
13 department, the board, the corrections department, the  
14 department of health or the children, youth and families  
15 department and who is currently a member may make a one-time  
16 election to join the public employees' retirement association  
17 prospectively, as long as such election is made before  
18 September 30, 2004. The member's contributions to the  
19 educational retirement board shall remain in the fund and be  
20 subject to the provisions of the Educational Retirement Act and  
21 to the Reciprocity Act."

22 Section 3. Section 22-11-25.1 NMSA 1978 (being Laws 2001,  
23 Chapter 283, Section 2, as amended by Laws 2003, Chapter 80,  
24 Section 1 and by Laws 2003, Chapter 145, Section 1) is amended  
25 to read:

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1 "22-11-25. 1. RETURN TO EMPLOYMENT-- BENEFITS CONTINUED--  
2 ADMINISTRATIVE UNIT CONTRIBUTIONS. --

3 A. Except as provided in Subsections B and [E] F of  
4 this section, beginning January 1, 2002 and continuing until  
5 January 1, 2012, a retired member may begin employment at a  
6 local administrative unit and shall not be required to suspend  
7 retirement benefits if the member has not been employed as an  
8 employee or independent contractor by a local administrative  
9 unit for at least twelve consecutive months from the date of  
10 retirement to the commencement of employment or reemployment  
11 with a local administrative unit. If the retired member  
12 returns to employment without first completing twelve  
13 consecutive months of retirement, the retired member shall  
14 remove himself from retirement.

15 B. A retired member who was retired on or before  
16 January 1, 2001, has not since suspended or been required to  
17 suspend retirement benefits pursuant to the Educational  
18 Retirement Act and is reemployed by a local administrative unit  
19 may continue employment at the local administrative unit and  
20 shall not be required to suspend retirement benefits.

21 C. Beginning July 1, 2004, a retired member who  
22 retired from a local administrative unit other than the  
23 department may begin employment at the department without  
24 suspending retirement benefits.

25 [~~C.~~] D. A retired member who returns to employment

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1 during retirement pursuant to Subsection A ~~[or]~~, B or C of this  
2 section is entitled to continue to receive retirement benefits  
3 but is not entitled to acquire service credit or to acquire or  
4 purchase service credit in the future for the period of the  
5 retired member's reemployment with a local administrative unit.

6 ~~[D.]~~ E. A retired member who returns to employment  
7 pursuant to ~~[Subsections A or]~~ Subsection A, B or C of this  
8 section shall not make contributions to the fund as specified  
9 in the Educational Retirement Act; however, the local  
10 administrative unit's contributions as specified in that act  
11 shall be paid to the fund as if the retired member was a non-  
12 retired employee.

13 ~~[E.]~~ F. Beginning July 1, 2003 and continuing until  
14 January 1, 2012, a retired member who retired on or before  
15 January 1, 2001 and who has not been employed as an employee or  
16 independent contractor by a local administrative unit for at  
17 least ninety days may begin employment at a local  
18 administrative unit without suspending retirement benefits if  
19 the retired member was not employed by a local administrative  
20 unit for an additional twelve or more consecutive months after  
21 the initial date of the retirement; provided that the ninety-  
22 day period shall not include any part of a summer or other  
23 scheduled break or vacation period. "